

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	08 CR 115
)	Honorable Judge Ronald Guzman
vs.)	
)	
MARK POLCHAN, et al.)	
)	
Defendants.)	

**MOTION AND MEMORANDUM OF LAW BY MARK POLCHAN IN SUPPORT
OF MOTION TO SUPPRESS SEARCH WARRANT AND TO DIVULGE
UNREDACTED VERSION**

A. Introduction

On July 17, 2007, FBI Special Agent Courtenae Trautmann submitted an application and affidavit for a warrant to search a document shredder (shredder) located in the office area of Goldberg Jewelers (Goldberg's).¹ The Title III surveillance leading up to the warrant request has been detailed in a separate motion. Regarding the shredder, the government alleged that "there is probable cause to believe that evidence of criminal offenses, namely...malicious damage to property by means of explosives in violation of Title 18, United States Code, Section 844(i)...shall be found in or within the vicinity of the document shredder location within the office area of the Target Business." (§2). These stated offenses relate to the February 25, 2003 bombing of C&S Coin Operated Amusement.

The headings and subheadings in the affidavit are described below and may be summarized as follows:²

- **Background Michael Sarno and Mark Polchan;**

¹ Attached as Exhibit#17 in Motion to Suppress Electronic Surveillance filed under seal.

² The emboldened words are direct quotes from the affidavit headings.

Details criminal records of the two men;

- **The Means and Method of the Chicago Outfit;**

Nicholas Calabrese, who was then testifying in the Operation Family Secrets Trial, was a source of information. This section described video gambling as an important source of the Outfit's income and uses the term "La Cosa Nostra" as well as defining what it means to be a "made" member of the Outfit;

- **Historical Information Provided by Confidential Informants and Others Concerning Michael Sarno's Role in the Chicago Outfit;**

The information in this section is provided by a number of informants:

- Confidential Informant One, (¶11-24) is an alleged upper echelon member of the "Outfit" and has been providing information to the government for over 25 years. CI 1 detailed Sarno's alleged connection to James and Mickey Marcello and claimed that Sarno helped run the Marcello's affairs while they were incarcerated. CI 1 also describes a feud between Sarno and Anthony Zizzo (an alleged boss in the Outfit) that came to a crescendo just before Zizzo was last seen. CI 1 claims that Polchan and Sarno were close associates around the time of Zizzo's disappearance.
- Confidential Informant Two, (¶25-27) another upper echelon Outfit associate who had been providing information to the government since 1994. CI 2 explained that, as late as 2004, Sarno was involved in illegal bookmaking, juice money collection and the Video Gambling Machine business;
- Confidential Witness Zero, (¶28) Claimed Sarno was an Outfit boss.
- Frank Calabrese Jr. (¶29-31) Claimed Sarno was collecting gambling proceeds for the Outfit around the time of the application.

- **Court Authorized Interceptions in Which James Marcello and Michael Marcello Discuss Sarno, and Sarno's Cut of Outfit Proceeds;**

These interceptions were obtained via judicial interception orders and utilized in United States v. Calabrese, 02 CR 1050; commonly referred to as the Family Secrets Trial (¶32-37);

- **Physical Surveillance of Sarno meeting with Cataudella and a man believed to be Michael Marcello;**

Details surveillance between Sarno and other alleged Outfit members in 2003 (¶38);

- **Information gathered during the current investigation;**

[REDACTED]

Subsection 2: Court Authorized Interception's at the Target Business

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- **Sarno's and Polchan Involvement in the bombing of C&S Coin Operated Amusements;** On page 53 of the affidavit, the affiant divulges over the next 11 pages the course and scope of the investigation into the bombing (¶58-redacted through 72);

- **The bombing of C&S Coin Operated Amusements;** while this portion of the affidavit deals with the bombing of C&S, several paragraphs are redacted;

- **Information provided by CW4 Concerning the Bombing of C&S (¶73-75);**
- **Corroboration of the Information provided by CW4 through the use of recorded Conversations (¶76-86);**
Volpendesto recordings made by CW4 and referred to at length in Motion to Suppress Electronic Surveillance filed under seal.
- **Kyle Knight is Charged with transferring explosive materials on July 10, 2007, and the Chicago Tribune and Chicago Sun Times Print Stories Concerning the Charge against Knight (¶87-88);**

[REDACTED]

[REDACTED]

[REDACTED]

B. Legal Standard

Probable cause exists when, under the totality of the circumstances, there is substantial basis for believing the evidence sought to be seized will be found in a particular place. *E.g., Illinois v. Gates*, 462 U.S. 213 (1983). A defendant is entitled to the redacted portions of a warrant application if the government is unable (or unwilling) to defend the warrant without relying on the redacted information. *United States v. Danovaro*, 877 F.2d 583, 588 (7th Circuit, 1989).

C. Argument

The affidavit and application for search warrant is 69 pages of utterly irrelevant information as it pertains to probable cause to search the document shredder at issue. Stopping short of a séance to conjure up the ghost of Al Capone, the affiant includes just about every other Outfit figure available in an attempt to tie Polchan and Sarno to the bombing of C&S Coins; still it comes up short. After a lurid history of the Chicago Outfit, the affiant redacts the majority of the Subsection C, *the area of the affidavit for reserved for information relating to the actual bombing.*

Nothing in the unredacted portions credibly connects Sarno to Polchan and the bombing. In the end, the government is relying on a hunch that the conversation is nefarious, much less related to an alleged bombing that occurred over four years before the warrant was sought.

As it stands, the warrant fails to provide evidence establishing that probable cause existed to search the document shredder for evidence of any crime, much less the bombing of C&S. The Court should require the government to disclose the un-redacted affidavit in support of its wiretap application, or the warrant must fall and all evidence recovered as a result should be suppressed.

/s/Damon M. Cheronis

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Notice of Motion

To: Clerk of the Court for the Northern District of Illinois

Honorable Judge Ronald Guzman

T. Markus Funk, United States Attorney's Office

PLEASE TAKE NOTICE that on May 14, 2010, I filed with the Clerk of the U.S. District Court for the Northern District of Illinois, Eastern Division, the attached **REDACTED MOTION TO SUPPRESS SEARCH WARRANT**

CERTIFICATION

I, Damon M. Cheronis, an attorney, certify that a copy of this Notice and attached documents were served upon the above-entitled parties by ECF Pacer.

s/ Damon M. Cheronis